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April 20, 2009

To: Supervisor Don Knabe, Chairman
Supervisor Gloria Molina
Supervisor Mark Ridley-Thomas
Supervisor Zev Yaroslavsky
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

MOTION TO OPPOSE SB 696 (WRIGHT) -- RELATED TO THE SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT AND SUPPORT FOR ADDITIONAL RELATED LEGISLATION (ITEM NO. 1, AGENDA OF APRIL 21, 2009)

Item No. 1 on the April 21, 2009 Agenda is a motion by Supervisor Molina directing County legislative advocates to: 1) oppose SB 696 (Wright) and any State legislation that would exempt the South Coast Air Quality Management District (SCAQMD) from the California Environmental Quality Act (CEQA); 2) support legislation that immediately allows essential public projects, hospitals, and exempt projects such as small businesses to gain SCAQMD permits, and emission credits as they have historically; and 3) support legislation that is consistent with the Federal Clean Air Act, CEQA and also allows the replacement of aging heavily polluting power plants with more efficient cleaner operating facilities conditioned upon the verifiable and enforceable transfer of emission credits, and adequate protections to ensure that communities already burdened with the region's poorest air quality do not experience a further deterioration of their air quality.

This memorandum provides comments on SB 696 (Wright). Further review is needed to analyze this bill with respect to the recent Superior Court ruling which rendered existing SCAQMD permits to be invalid and placed a moratorium on future permits for the use of certain equipment which is commonly utilized in County capital projects.

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Existing Law

The California Environmental Quality Act requires a lead agency to prepare and certify the completion of an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds the project will not have that effect. CEQA exempts certain specified projects from its requirements.

Existing law also requires every air pollution control district or air quality management district in a Federal non-attainment area for any national ambient air quality standard to establish by regulation, a system by which all reductions in emissions of air contaminants that are to be used to offset certain future increases in the emission of air contaminants are banked prior to use. Pursuant to this requirement the SCAQMD adopted and amended various rules which established offset exemptions, provided Priority Reserve offset credits, and created and tracked credits used for offset exemption for Priority Reserve projects.

However, in *Natural Resources Defense Council v. South Coast Air Quality Management District* (Superior Court Los Angeles County, 2007, No. BS 110792), the Superior Court found the adoption of SCAQMD rule 1315 and the amendment of rule 1309.1 violated CEQA. Because of the court ruling the SCAQMD denied the City of Vernon's permit for a proposed power plant. The court decision also rendered existing SCAQMD permits to be invalid and placed a moratorium on future permits for equipment which is commonly used on County capital projects.

SB 696 (Wright)

SB 696, as amended on April 13, 2009, would: 1) overturn the court decision cited above; 2) exempt three SCAQMD rules (1304 related to offset exemptions, 1309.1 related to Priority Reserve credits, and 1315 related to new source review tracking system) from CEQA if specified conditions are met, including compliance with requirements for best available control technology, air quality modeling impacts, toxic impacts and specified emissions levels; and 3) require the State Energy Resources Conservation and Development Commission to perform a needs assessment for a thermal power plant proposed to be located in the SCAQMD. SB 696 contains an urgency clause which would make it effective immediately if passed by the Legislature by a two-thirds vote and signed by the Governor.

SB 696 defines thermal power plant as any stationary or floating electrical generation facility using any source of thermal energy and any facilities appurtenant to the facility. Exploratory, development, and production wells, resource transmission lines, and other

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related facilities used in connection with a geothermal exploratory project or a geothermal field development project are not appurtenant facilities under SB 696. In addition, thermal power plant does not include any exclusive wind, hydroelectric, or solar photovoltaic electrical generating facility for purposes of the bill.

The Department of Public Works and this office indicates that the County needs more time to analyze this bill with respect to the recent Superior Court ruling which rendered existing SCAQMD permits to be invalid and placed a moratorium on future permits for the use of certain equipment which is commonly utilized in County capital projects. This includes equipment with motors and generators that produce polluting emissions.

The Department of Regional Planning concurs with concerns expressed by the First District that mitigation measures required of polluters may not be implemented locally. Locally applied mitigation measures can be verified by County staff. Mitigation measures implemented outside of the County, particularly those implemented outside of the State or the County, would be extremely costly for County agencies to verify. The Department of Regional Planning would be opposed to any legislation, such as SB 696, which would exempt the SCAQMD from the provisions of the CEQA.

The Internal Services Department reviewed SB 686 and has no comment. County Counsel reviewed the bill and has no comment other than recommending a technical change to the motion which cites rule 1309.1 and the rule referenced in SB 696 is 1309.1.

SB 696 is sponsored by the SCAQMD. Support for SB 696 is unknown at this time, and there is no registered opposition. This bill is set for hearing on May 5, 2009 in the Senate Energy, Utilities and Communications Committee.

WTF:GK
MAL:MR:EW/LY:er

c: Executive Officer, Board of Supervisors
County Counsel
Department of Public Works
Internal Services Department
Regional Planning Department